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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 4533/2019

MAMTA BHARDWAJ

.....Petitioner

Through: Mr. Vinod Kumar Bhardwaj and Ms.
S. Sathan, Advocates.

versus

STATE & ANR

.....Respondents

Through: Mr. Satinder Singh Bawa, APP for
State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

29.10.2025

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1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹ is directed against order dated 14th May, 2019 passed by the ASJ in Criminal Revision No. 502/17, titled “**Mamta Bhardwaj v. Vinod Kumar Bhardwaj**”. By the impugned order, the Revisional Court upheld the order dated 31st July, 2017 passed by the Trial Court, discharging Respondent No. 2 of the offences punishable under Sections 498-A and 406 of the Indian Penal Code, 1860.²

2. The facts necessary for adjudication are as follows: The parties married on 13th November, 1994. Matrimonial discord followed and they began to live apart. On 22nd August, 2003, the Petitioner lodged a complaint

¹ “Cr.P.C.”

² “IPC”



alleging cruelty and criminal breach of trust under Sections 498-A and 406 IPC against, *inter alia*, Respondent No. 2. After recording pre-summoning evidence, the Trial Court summoned Respondent No. 2 to face trial. Subsequently, upon recording of the pre-charge evidence, the Trial Court, by order dated 31st July, 2017, discharged Respondent No. 2 of the aforesaid offences. The relevant portion of the said order reads as under:

“4. The accused Vinod Bharadwaj has been summoned in the present case for offences punishable U/s 498A/406 IPG vide order dated 12.04.2014. In the pre-charge evidence, the complainant has examined herself as PW1, her brother Mr. Aadarsh Kr Sharma as CW2, Dr. Naresh Kr. Navani as CVV3 and a common friend Ms. Priti Kharbanda as CW4, all witnesses except CW1 & CW4 have been cross-examined c. length by Ld. Defence Counsel.

5. In the testimony of the complainant i.e. the victim PW1, there are no allegations for "demand of dowry". Under Section 498-A IPG, cruelty can be of two types. Firstly, wilful conduct of a nature which is likely to drive a woman to commit suicide or to cause grave Injury or danger to life, limb or health. Wilful conduit can be both mental and physical but it must relate to a woman. Secondly, cruelty can also mean harassment with a view to coercing her or any person related to bar to meet unlawful, demand of any property or valuable security or oh account of her failure or of any person related to her to meet, such demand. The second aspect 'is related to property, and should be with a view to coerce her or' any other person related to her to meet any unlawful demand of' property or valuable security. Further, the harassment should be on account of her failure or failure of any other person related to her to meet the said demand.

6. As per the testimony of PW1, the accused after the marriage i.e. on 13.11.1994, usually stayed out of town and marriage could not be consummated. Further on 22.12.1994, the accused went to Holland and before leaving, he told his relatives that complainant was pregnant. She has further testified that in October, 1995, on Diwali, her father-in-law met with an accident and after discharge from the hospital, the relatives told her that the accused was impotent and her father-in-law gave her beatings in May, 1996 and Mrs. Kharbanda came to save her. Mrs. Kharbanda has been produced as a complainant witness CW4, who has not supported her case. Further PW1 complainant/victim has testified that on 23/24.05.1996, the accused left her outside her parental house by saying that he will take her to Holland soon & in Dusshera of 1996, the complainant's father was informed that the accused does not want to keep the complainant.



Thereafter, she filed a complaint in CAW Cell u/s 498A/406 IPC but no action was taken by the police. Therefore, from the testimony of the complainant PW1 there is no material to show that there was a demand for dowry articles and she was subjected to cruelty and harassment for meeting the dowry demand. Nor there is evidence to the effect that any mental or physical injury was caused to her due to the wilful conduct of the accused. Dr. Ashok Kumar Navani CW3, who has been produced by the complainant to support her case could not produce any medical record of the complainant. Even other complainant witnesses i.e. CW2 Aadarsh Kr Sharma has not testified with respect to any demand made by the accused for dowry or that any harassment was caused to the complainant coercing her to meet such demand or that she suffered any injury mental or physical.

7. Further, Section 405 of the Code, which defines the offence punishable 406 IPC requires the following essential ingredients: -

(a) That the accused i/vas entrusted with property or with dominion over it.

(b) That he-

- (i) misappropriated it, or
- (ii) converted it to his own use, or
- (iii) used it, or
- (iv) disposed of it.

(c) That he did so dishonestly.

(d) That he did so in violation of -

- (i) any direction of law prescribing the mode in which such trust M/as to pe discharge, or
- (ii) my legal contract expresses or implied, which he has made touching the discharge of such trust, or
- (e) That he wilfully suffered any person to do as in (2), (3) and (4) (i) or 4(ii).

8. The testimony of none of the complainant witnesses shows that there was any entrustment or any dominion of property to the accused, which he dishonestly misappropriated or converted to his own use. There is not even a shred of evidence that any property / stridhan of complainant was given, which was misappropriated by the accused.

9. Hence, in view of the above discussions and considering the material on record, including the testimony of complainant PW1 and other complainant witnesses, this Court is of the opinion, that there is no material to frame charges against accused Vinod Kumar Bharadwaj U/s 498A & 406 IPC. Accordingly, accused Vinod Kumar Bharadwaj stands discharged from the said offences.

10. Accused is directed to file ball bond for a sum of Rs. 10,000/- along with one surety of like amount under section 437A CrPC. Bonds furnished. Accepted for 6 months from today.

11. File be consigned to the Record Room after due compliance.”



3. Dissatisfied, the Petitioner preferred a revision petition against the aforesaid order, which was dismissed by the Sessions Court by order dated 14th May, 2019 to the following effect: -

“1. Correctness, legality and propriety of order dated 31.07.2017 passed by learned Metropolitan Magistrate-03, Mahila Court, South-East, Saket Courts, New Delhi whereby respondent Vinod Kumar Bhardwaj has been discharged is under challenge in this revision petition.

2. I have heard Sh. Raj Kumar, learned counsel for petitioner as well as Sh. Sanjeev Salhan, learned counsel for respondent and considered the rival submissions.

3. Factual background is that a criminal complaint was filed by petitioner under Section 406/498A IPC against respondent and two more persons pursuant to which respondent was summoned under Section 406/498A IPC. Thereafter, pre-charge evidence was led. During pre-charge evidence, complainant examined herself as CW 1. Petitioner also examined her brother Adarsh Kumar Sharma as CW 2 while Priti Kharbanda was examined as CW 4 and Dr. Ashok Kumar Navani was examined as CW 3.

4. Trial court analyzed pre-charge evidence and came to the conclusion that there is no material to show that there was demand for dowry articles and that petitioner was subject to cruelty and harassment for meeting the demands. It was further observed that ingredients of Section 406 IPC are not made out in the present case and accordingly, respondent was discharged.

5. Depositions of petitioner as well as other witnesses examined during pre-charge evidence have been perused. Petitioner has not alleged any demand of dowry on the part of respondent. One does not find any element of cruelty being meted out to the petitioner in the entire evidence.

6. Sh. Raj Kumar, learned counsel for petitioner, submitted that respondent has not paid maintenance to petitioner despite court order and this amounts to mental cruelty. Petitioner has not referred to nor has proved any judicial order whereby maintenance has been granted to petitioner. Similarly, no evidence has been adduced on record by petitioner to show that respondent has failed to pay maintenance to her despite court order.

7. The next contention of petitioner was that respondent has deserted her which amounts to cruelty and hence, respondent is liable to be charged under Section 498A IPC. A careful examination of deposition of petitioner would show that petitioner has made vague allegations of desertion on the part of respondent, Petitioner has



deposed that on 23/24.05.1996, her husband left her outside her parental house saying that he will take her to Holland. Petitioner has not explained as to whether she tried to contact the respondent subsequently requesting him to take her to Holland and whether her request was declined by respondent. Therefore, there is no specific evidence showing desertion of petitioner by respondent.

8. *The obvious conclusion is that no evidence has come on record to frame charge under Section 406/498A IPC against respondent and hence, respondent was rightly discharged by learned Metropolitan Magistrate.*

I find no illegality in the impugned order. The revision petition is devoid of merit. Same is accordingly dismissed.”

4. Aggrieved, the Petitioner invokes the inherent jurisdiction under Section 482 Cr.P.C. to assail the revisional order, urging that the courts below overlooked material sufficient, at least *prima facie*, to frame charges under Sections 498-A and 406 IPC. The thrust advanced is that the accusation does not rest on dowry demand, but on two planks: sustained marital cruelty manifested in non-consummation and sustained neglect, and desertion leading to mental cruelty. It is submitted that these features, taken together with the overall matrimonial history, meet the first limb of Section 498-A (“wilful conduct” likely to cause grave mental injury). As to Section 406 IPC, it is argued that the Petitioner’s *stridhan* stood rested in the Respondent’s custody after marriage and the continued deprivation amounts to criminal breach of trust.

5. The Petitioner also relies on a Family Court order dated 28th March, 2018, which granted maintenance and, in that context, recorded desertion by the Respondent. Building on that finding, it is urged that the Sessions Court erred in treating the allegations of desertion as “vague” and in concluding that no *prima facie* case of “cruelty” emerged. The submission is that once desertion and neglect stand judicially noticed in cognate proceedings, the criminal court ought not to have short-circuited the matter at the pre-charge



stage.

6. The Court has considered the aforementioned contentions. At the outset, it is important to underscore that the Petitioner has invoked the jurisdiction of this Court under Section 482 of the Cr.P.C., challenging an order passed by the revisional court. In this context, it is well settled that the High Court's inherent jurisdiction under Section 482 Cr.P.C. to interfere with a revisional order is extremely limited. Pertinently, Section 397(3) Cr.P.C. provides that where an application for revision has been made by any person to either the High Court or the Sessions Judge, no further application by the same person shall be entertained.

7. In this regard, the Supreme Court, in its judgement in **Rajinder Prasad v. Bashir**,³ relying on its earlier decision in **Krishnan v. Krishnaveni**,⁴ held that where a second revision is barred under Section 397(3) Cr.P.C., a party cannot resort to invoking the inherent powers of the High Court under Section 482 to circumvent this statutory bar, as such an exercise would undermine the object and intent of the provision. The Supreme Court, in **Kailash Verma v. Punjab State Civil Supplies Corporation & Anr.**,⁵ further emphasized that the power under Section 482 must not be utilised as a substitute for a second revision, and can only be exercised in cases of grave miscarriage of justice, abuse of the court's process, violation of mandatory legal provisions, or where the High Court deems it necessary to correct an error committed by the revisional court.

8. It must also be emphasized that at the pre-charge stage, the material placed on record is to be taken at its face value, without evaluating its

³ (2001) 8 SCC 522.

⁴ (1997) 4 SCC 241.

⁵ (2005) 2 SCC 571.



probative force. If such material raises a strong suspicion regarding the commission of the alleged offence, the matter should be put to trial.⁶ If two views are possible and one leads only to a mere suspicion, discharge may follow.⁷

9. The allegations of cruelty made by the Petitioner in the present case rest on three principal grounds: (i) failure to consummate the marriage; (ii) non-payment of maintenance; and (iii) desertion. In her complaint, the Petitioner averred that her marriage had not been consummated and that she had been informed by Respondent No. 2's relatives that he was impotent. However, during the course of pre-charge evidence, the Petitioner neither reiterated the said allegation, nor examined the relatives who allegedly conveyed such information to her. Further, no medical evidence or expert opinion was placed on record to substantiate the claim of impotency. In the absence of any such corroborative material, this claim remained unsubstantiated.

10. As regards the allegation of non-payment of maintenance, it is pertinent to note that the order of the Family Court granting maintenance in favour of the Petitioner was passed subsequent to the institution of the present complaint and even after the passing of the discharge order by the Trial Court. Furthermore, the Sessions Court, while exercising its revisional jurisdiction and examining the correctness of the Trial Court's order, specifically observed, "*the Petitioner has not referred to nor proved any judicial order whereby maintenance has been granted to her.*" In the absence of such order having been produced or proved during the course of

⁶ State of Bihar v. Ramesh Singh, (1977) 4 SCC 39.

⁷ Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.



pre-charge evidence, the said allegation remains unsubstantiated and cannot advance the Petitioner's case. In any event, the mere non-payment of maintenance, *per se*, cannot be construed as cruelty within the ambit of Section 498-A IPC, unless the conduct is accompanied by attendant circumstances establishing that such omission caused grave mental or emotional distress to the wife. In the present case, neither such circumstances were pleaded nor proved. Moreover, reliance on the Family Court's maintenance order does not carry the matter over the criminal threshold. Findings in matrimonial jurisdiction are rendered on a different standard and for a different relief; they may be relevant context, but are not determinative of a penal charge that requires the specific ingredients of Section 498-A to be *prima facie* present. Furthermore, The Petitioner also made an ancillary allegation that Respondent No. 2 had contracted a second marriage during the subsistence of the first marriage; however, no documentary evidence, witness testimony, or other material was adduced to substantiate this assertion.

11. The Petitioner further alleged that Respondent No. 2 had left her at her parental home in the year 1996 and thereafter, failed to contact her. These allegations, however, are vague and lacking in particulars. The complaint does not explain how the alleged act of desertion, even if accepted as true, satisfies the legal requirements of cruelty contemplated under Section 498-A IPC. Significantly, while the alleged desertion is stated to have occurred in 1996, the complaint was lodged only in 2003, after an inordinate delay of nearly seven years. Such belated initiation of criminal proceedings also materially diminishes the evidentiary value and credibility of the allegations.



12. In view of the foregoing discussion, the Court is of the view that the material on record does not disclose the essential ingredients of the offence under Section 498-A IPC, which requires a clear demonstration of wilful conduct likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb, or mental or physical health. The Petitioner neither produced medical evidence nor examined any independent witness to corroborate the allegation of impotency; and the allegation of desertion, even if accepted, lacks particulars and is significantly belated, being raised nearly seven years after the alleged occurrence. Moreover, the testimony of the Petitioner's witnesses did not materially advance her case, as the independent witnesses either did not support her version or turned hostile. Further, allegations of non-consummation, marital neglect, or breakdown *per se*, howsoever distressing, do not, without more, satisfy the statutory threshold. Matrimonial "cruelty" under personal law (for divorce/maintenance) does not *ipso facto* translate into "cruelty" under Section 498-A. Courts have consistently drawn this distinction, insisting on specific acts and the requisite intensity.⁸

13. Secondly, Section 406 IPC demands clear averment and *prima facie* proof of entrustment or dominion over identified property (typically *stridhan*), followed by dishonest misappropriation, conversion, or use in breach of direction of law or legal contract. Vague assertions such as *stridhan remained with the husband or in-laws* are inadequate; particulars of the articles, the act of entrustment, and subsequent dishonest dealing are essential.

14. For these reasons, the challenge founded on "cruelty by

⁸ See: Girdhar Shankar Tawade v. State of Maharashtra, (2002) 5 SCC 177.



desertion/non-consummation” and a general assertion of *stridhan* retention does not disclose a jurisdictional error in the discharge order or in the Revisional Court’s affirmance.

15. Accordingly, the Court is of the opinion that the concurrent findings of the Trial Court, as affirmed by the Sessions Court, are based on a proper appreciation of the evidence and applicable legal principles, and do not suffer from any perversity or illegality; and the petition, on the present material, does not make out a case for interference under Section 482 Cr.P.C.

16. Dismissed.

SANJEEV NARULA, J

OCTOBER 29, 2025/MK